

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIANA WATERS,

Defendant.

Case No. CR05-5828FDB

ORDER GRANTING THE UNITED
STATES' MOTION FOR SALIVA
SAMPLE

The United States moves for a saliva sample from Briana Waters in order that they may compare her DNA sample with that of hairs found at (1) the site of the arson of the Center for Urban Horticulture attached to a piece of broken glass outside the window that the arsonists cut in order to gain access, and at (2) the former residence of Defendant Justin Solondz when investigators found a black plastic bag that contained various items of dark clothing, including a knit cap, gloves, a stocking cap, a wig cap, a dome cap, and a shower cap, on which multiple brown hairs were attached. The hairs found at these locations are brown, and Defendant Waters' hair is light brown or dark blonde.

While it is well settled that a suspect may be required to provide a DNA sample, *see, e.g., United States v. Bonds*, 12 F.3d 540, 549 (6th Cir. 1993), courts have differed in whether the United

1 States need show a “reasonable suspicion,” *see United States v. Noble*, 433 F. Supp. 2d 129, 134-35
2 (D. Me. 2006) or whether it must show “probable cause,” *see, e.g. In re Grand Jury Proceeding*,
3 455 F. Supp. 2d 1281, 1286 (D. N.M. 2006).

4 The Government argues, that whatever standard applies, in this case both standards have
5 been met. DNA analysis has already excluded three other defendants – William Rodgers, Lacey
6 Phillabaum, and Jennifer Kolar – as the source of the hair, and a fourth defendant, Justin Solondz, is
7 still a fugitive. The Government also reasons that because Waters and Solondz were involved in a
8 romantic relationship for two or more years during the conspiracy and lived together, and because
9 there is strong evidence that they participated in at least two arsons together, there is, therefore, a
10 strong possibility that Waters wore one or more items of clothing found in the cabin, which was the
11 type of clothing that the conspirators typically wore when committing the arsons.

12 Defendant Waters opposes the motion for a saliva sample arguing that the most consistent
13 thing witnesses claim is that Waters was the “lookout” and was blocks away from the University of
14 Washington building at the time of the fire; and that as to the Susanville arson, only Stanislaw
15 Meyerhoff apparently claims that Waters was present there, although in past interviews he has stated
16 that Waters looked familiar, but was not involved. Moreover, Defendant contends that the
17 Government has not revealed the genetic profile connected with the hairs found at Defendant
18 Solondz’s home in 2007 and whether they match the profile of the hairs from the University of
19 Washington site.

20 Defendant Waters argues that there is no distinction between blood and saliva for Fourth
21 Amendment purposes, *see United States v. Noble*, 433 F. Supp. 2d 129, 133-34 (D. Me. 2006), and
22 that the Ninth Circuit has never adopted a standard less than probable cause, *see Crowe v. County of*
23 *San Diego*, 359 F. Supp. 2d 994, 1023 (S.D. Ca. 2005)(relying on *United States v. Wright*, 215 F.3d
24 1020 (9th Cir. 2000) (“Intrusions into the human body, including the taking of blood, are searches
25 subject to the restrictions of the Fourth Amendment. ... In order to pass Fourth Amendment muster,

1 a warrant must be supported by probable cause.”) *Wright* also points out that “... the relevant inquiry
2 looks to the totality of the circumstances, that is, whether “given all the circumstances set forth in the
3 affidavit before [the magistrate] ... there is a fair probability that contraband or evidence of a crime
4 will be found in a particular place.”

5 Applying the probable cause standard in resolving the issue, under all the circumstances,
6 there is probable cause to believe that Briana Waters’ DNA may match that of the hair found at the
7 site of the Center for Urban Horticulture at the University of Washington or that of the hair on the
8 items found in a plastic bag at the former residence of fugitive Defendant Justin Solondz.

9 ACCORDINGLY, IT IS ORDERED: The United States’ Motion for a Saliva Sample [Dkt. #
10 167] is GRANTED, and Defendant Waters shall supply a sample of her saliva to Special Agents of
11 the Federal Bureau of Investigation (FBI), which sample is to be taken by FBI Agents in accordance
12 with the FBI’s standard procedures for the collection of saliva samples.

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14 DATED this 5th day of September, 2007.

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17 FRANKLIN D. BURGESS
18 UNITED STATES DISTRICT JUDGE
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